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Law Is Not Enough

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BOOK REVIEW

LAW IS NOT ENOUGH

BERTA E. HERNÁNDEZ-TRUYOL*

Gender Injustice: An International Comparative Analysis of Equality in Employment. Anne-Marie Mooney Cotter. Ashgate Press, 2004. Pp. 306, \$114.95 (hardcover).

I. INTRODUCTION

In 1995, the United Nations reported “in no society today do women enjoy the same opportunities as men.”¹ The condition and status of women worldwide was one of social, political, educational, legal, and economic inequality.² Ten years later, women’s economic disparities persist.³ In *Gender Injustice: An International Comparative Analysis of Equality in Employment*, Dr. Anne-Marie Mooney Cotter focuses on women’s global inequality in employment. The book’s in-depth examination of women’s second-class, subordinated status in the workplace around the world provides invaluable insights into the complexities of gender inequality.

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1. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1995: GENDER AND HUMAN DEVELOPMENT 29 (1995) (noting “a widespread pattern of inequality between women and men—in their access to education, health and nutrition, and even more in their participation in the economic and political sphere”), <http://hdr.undp.org/reports/global/1995/en/> (last visited June 20, 2005).

2. See UNITED STATES DEP’T OF STATE, COUNTRY REPORTS OF HUMAN RIGHTS PRACTICES FOR 1995 (1996) (stating that women “face discrimination in access to education, employment, healthcare, financial services including credit, and even food and water”), http://dosfan.lib.uic.edu/ERC/democracy/1995_hrp_report/95hrp_report_overview.html (last visited July 6, 2005).

3. In 2005, the United Nations 49th Session of the Commission on the Status of Women met in New York to evaluate the condition of women ten years after the 1995 Beijing Conference on Women. See Inter-Parliamentary Union, *Beyond Beijing: Towards Gender Equality in Politics*, <http://www.ipu.org/splz-e/csw49.htm> (last visited June 21, 2005). For the 1995 Beijing Conference on Women, see *Beijing Declaration and Platform for Action*, United Nations Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Beijing Declaration].

II. GENDER INJUSTICE IN TODAY'S GLOBAL LABOR FORCE: KEY CONCEPTS AND THEORIES

The first two chapters, entitled *Introduction to Gender Injustice* and *Gender Injustice and Women* are ambitious undertakings that provide critical foundational information. In the first chapter, Dr. Cotter defines her focus as "the goal of gender equality, and the importance of the law and legislation to combat discrimination."⁴ The book succeeds both in documenting the ubiquity of gender inequality in the workplace and in providing a blueprint to achieve gender justice.⁵

Pertinent considerations in the quest for gender equality include fundamental rights, gender discrimination in the labor market, the role of women in global society, the rule of law, and equality in employment. Dr. Cotter provides a useful two-page synopsis of women's location in society that nicely situates the need for this book: "internationally, men continue to dominate the labor force,"⁶ meaning that women's hourly earnings, regardless of whether a state is developed or developing, core or periphery, is below that of men;⁷ and women, more than men, are likely to be found in low-wage employment, with the result of "poverty ha[ving] a woman's face."⁸

Dr. Cotter observes that globalization and its consequences have had a deleterious impact on women's employment because:

[m]acroeconomic and social policy amended within the context of economic reform programs and globalization trends have resulted in decreases of public expenditures and social welfare provisions. The consequences impact disproportionately upon women and girls in areas such as education, training, health care and social services, public sector employment and general unemployment, and in basic needs such as food and medicines. Women have fewer opportunities for income generation, yet they are expected to provide economic and social sustenance for their families and communities.⁹

4. ANNE-MARIE MOONEY COTTER, *GENDER INJUSTICE: AN INTERNATIONAL COMPARATIVE ANALYSIS OF EQUALITY IN EMPLOYMENT* 2 (2004).

5. *Id.* at 1.

6. *Id.* at 3.

7. *Id.*

8. *Id.*

9. *Id.* On the impacts of globalization, see also *id.* at 85 (noting that globalization's "international economic developments have had a disproportionate impact on women and children" including "a negative impact on women's employment," resulting in the placement of women in low paying jobs with low security and often dangerous working conditions, and where female employment, simply based on sex, is "under-remunerated and undervalued").

One specific obstacle globalization creates for women's economic advancement is the growth of the informal sector. Available jobs were "created in recent agro and tertiary industry expansion [which] involve labor-intensive, low-paid, and informal activities that are sub-contracted to women, often on a casual insecure basis."¹⁰ Women's lack of education and lack of technical skills necessary for obtaining better jobs has, in turn, affected their ability to care for their families.

The *Rule of Law* section in the first chapter seeks to cover an exceedingly difficult topic in a mere page and a half. The result is a difficult read with too many vague points, excessive jargon, an unclear purpose, and inconsistent propositions.¹¹ For example, Dr. Cotter claims that "[b]y legitimizing the legal process and holding up the ideals of equality in the fight against gender injustice, the law and the courts can bring about change."¹² This statement, however, cannot be reconciled with the reality that laws mandating equality have existed for decades at the international, regional, and local levels, yet, as Dr. Cotter herself has ably documented, inequality persists. Perhaps Dr. Cotter could have simply posited her thesis that "'Gender Injustice' offers a defense of the notion that social reform is possible through key institutions, which include the legal system and its use of the law"¹³ and then proceeded to explain to the reader how she intended to prove that proposition.

Dr. Cotter introduces several important concepts in chapter 1. She defines gender as "the social attributes and opportunities associated with being female and male, and the relationships between women and men, and girls and boys, as well as between women and between men,"¹⁴ a concept that is "socially constructed and . . . learned through socialization."¹⁵ This social construct helps explain why there are inequalities in economic activities and disparities in opportunities between men and women around the world.

Dr. Cotter also explains the concepts of equal pay for equal work and comparable worth,¹⁶ and provides vital information on

10. *Id.* at 4.

11. For a discussion on the complexity of the rule of law concerns, see Berta E. Hernández-Truyol, *The Rule of Law and Human Rights*, 16 FLA. J. INT'L L. 167 (2004).

12. COTTER, *supra* note 4, at 5.

13. *Id.* at 4.

14. *Id.* at 6.

15. *Id.*

16. *Id.* at 6–7. Comparable worth reflects the concept of "equal pay for work of equal value" with respect to which "male and female workers are protected from discrimina-

women's and men's relative earning capacities. Dr. Cotter debunks economists' rationalizations of the gender gap, such as the differential market value of what women produce, by applying the theory of human capital to explain women's wage gaps and job sector segregation as the consequences of discrimination.¹⁷ Women's inequality results from disparate education, training, and work experiences—factors largely dependent on gendered perceptions of women's appropriate social location—as well as their relegation to the reproductive sphere.¹⁸ This latter reality leads to the dual burden of women who work outside the home and also bear the onus of childcare and housework.

In chapter 2, *Gender Injustice and Women*, Dr. Cotter first offers a brief overview of feminist theories¹⁹ that are “based on the reality of specific historical experiences of oppression”²⁰ in order to provide the foundations of how gender “identifies the persistence of asymmetric power relations.”²¹ The practical legal applications of these theoretical frameworks often fail to effect women's equality because of the structural male bias of law. The “liberal paradigm sees the women's struggle for equal access but . . . falls short of its stated goal” because formal legal equality—the male-centric model in which women can be equal to men so long as they can do the things men do—ignores real inequalities and differences, such as women's role in childbearing.²² The social welfare paradigm, on the other hand, accepts women's differences and acknowledges specific matters necessary to women's equality “such as maternity leave, aid to women with children and childcare services.”²³ Pro-

tion . . . when they are performing different jobs for the same employer.” To evaluate whether the work is of equal value, “a comparison of the work is required, which involves assessing the nature of the tasks and the demands made upon the workers in carrying them out, such as skill, effort and responsibility.” *Id.* at 7. In evaluating the nature of the job, the criteria cannot discriminate based on gender. *Id.* It is noteworthy that the comparable worth doctrine has not been embraced in the United States. *See infra* note 130 and accompanying text.

17. COTTER, *supra* note 4, at 7–8 (arguing that “people can increase their productivity by investing in themselves” mainly in “formal education and in work training”).

18. *Id.* at 7, 10.

19. *See id.* at 16–17 (discussing liberal, radical, cultural, socialist, and post-modernist feminism). For a more extensive discussion of the various feminisms, see Berta E. Hernández-Truyol, *Crossing Borderlands of Inequality with International Legal Methodologies—The Promise of Multiple Feminisms*, 44 GERMAN Y.B. OF INT'L L. 113 (2001); Berta E. Hernández-Truyol, *Out of the Shadows: Traversing the Imaginary of Sameness, Difference, and Relationalism—A Human Rights Proposal*, 17 WIS. WOMEN'S L.J. 111 (2002).

20. COTTER, *supra* note 4, at 16.

21. *Id.* at 15.

22. *Id.* at 19.

23. *Id.*

grams such as these, which focus on women's reproductive and childcare roles, however, "often define differences inappropriately and serve to make people dependent."²⁴

Dr. Cotter posits that "[a] viable solution is the dynamic proceduralist paradigm, which sees women as essential to public discussions, adding to the necessary process of valued discourse."²⁵ Despite recognizing the structural bias of the legal system, Dr. Cotter holds that "[t]he transformative potential of the law is the role it can play in the creation of a society based on an ethic, which responds to needs, honours differences and rejects discriminatory abstractions."²⁶ In order for law to achieve this transformative potential, Dr. Cotter proposes a new, woman-centered strategy that deconstructs male biases in the law and reconstructs a system grounded upon true equality—equality in fact, as well as in law. Dr. Cotter, however, fails to explain how she would achieve this paradigmatic shift: over time, it has become clear that law is not enough.

The second part of chapter 2 focuses on gender segregation, equal value, and wage solidarity in the labor market. Using the theory of labor market discrimination—which she describes as "a labor queue, comprised of ordered elements, with society granting men first choice of jobs which are the most attractive"²⁷—Dr. Cotter observes "that earning differences are based on race and gender, [and can] only [be] reduced through effective enforcement of anti-discrimination policies."²⁸ Gendered occupational segregation exists both in horizontal and vertical planes: the elements systematically and structurally favor men, and result in a "high ranked male workforce [that] has grown the fastest, is paid the best, has more vocational training, requires less strength, and shelters incumbents from competition."²⁹ Men occupy the high-paying "sectors of management, craft and transportation . . . while women are usually found in the service and administrative support jobs as well as the semi-professional female dominated sectors of nursing, library, social work and teaching."³⁰ In short, men have high-pay-

24. *Id.*

25. *Id.* (footnote omitted).

26. *Id.*

27. *Id.* at 24.

28. *Id.* (footnote omitted).

29. *Id.* at 24–25.

30. *Id.* at 25 (noting that "half of women [are] found in three traditional female careers, namely the clerical, sales and service sectors," *id.* at 27, that "roughly 80 percent of people . . . [are] not work[ing] with the opposite sex," *id.* at 28 (footnote omitted), and

ing white and blue collar jobs, while women generally have low-paying pink collar jobs.

Dr. Cotter attributes women's degree of progress in recent years to a myriad comprehensive domestic, regional, and international norms proscribing discrimination.³¹ Yet notwithstanding the existence of those laws, pure disparities³² and systemic inequities³³ persist: discrimination—including hierarchical and patriarchal hiring practices; retaliatory practices; and the channeling and marginalization of female workers—explains this ongoing inequality.³⁴

Dr. Cotter's discussion of the role of globalization and neoliberal economies in maintaining depressed wages for women—as well as the wages of other non-elite workers, such as racial minorities and citizens of the periphery—is a valuable contribution to the literature.³⁵ The solutions she posits to this wage problem, however, appear to be contradictory: First, she urges a woman-centered approach, plainly stating that “[w]omen's inequality must be at the centre of the debate.”³⁶ Next, she suggests a wage solidarity approach³⁷ that focuses on class rather than on a gender-specific,³⁸ equal value-comparable worth approach.³⁹

To be sure, Dr. Cotter properly critiques the comparable worth approach⁴⁰ as laden with virtually insurmountable structural problems, not the least of which is that measures of “value” simply “reflect and rationalize the [existing] unequal class structure, since heavy weight is assigned to skill and responsibility rather than effort and working conditions.”⁴¹ A comparable worth approach, therefore, neither interrogates nor critiques the entrenched status quo that perpetuates existing gendered hierarchies such as

that “wages are strongly linked to the proportion of females in an occupation, as the femaleness of an occupation still correlates to lower wages.” *Id.*).

31. *See id.* at 1–3, 41–89, *passim*.

32. *Id.* at 27 (defining these as inequalities “where one is paid less for the same job”).

33. *Id.* (defining these as inequities “where there are discriminatory effects to policies and practices”).

34. *Id.*

35. *Id.* at 33 (“The periphery consists of women, youth, and minorities.”); *see also id.* at 87 (noting that factors such as “race, ethnicity, culture, indigenouness, age, language, religion, or disability” exacerbate women's barriers).

36. *Id.* at 33.

37. *Id.* (noting that “wage solidarity seeks to push up the wages of the lowest paid to an acceptable living standard, flattening the hierarchy and eliminating gender bias in pay differentials”).

38. *Id.* at 30, 33.

39. *Id.* at 30–31.

40. *See generally id.*

41. *See id.* at 31.

women's responsibility for the physical and emotional support of the family.

While these realities render a value approach ineffectual in regards to the advancement of women, Dr. Cotter fails to explain how the non-woman-centered wage solidarity approach—which seeks to use labor unions to raise wages by promoting worker solidarity⁴²—will help women. Indeed, the author readily admits that in unions, “[t]he full-time permanent pensionable core is mostly made up of white males, while the periphery consists of women, youth and minorities.”⁴³ It is difficult to contemplate that organizations that “provide for gender segmentation of the market, support the traditional ideology of women’s work and male breadwinners, resist broader bargaining, and enforce patriarchal bureaucratic hierarchy,”⁴⁴ would take the necessary steps to ensure women’s equality.⁴⁵ The microcosm of the union demands the same effort as society at large: society must make women visible, interrogate structural male bias, and center the woman question to attain gender justice.⁴⁶

Perhaps rather than either a woman-centered or a wage-solidarity approach, Dr. Cotter is really proposing a novel hybrid: a woman-centered, wage-solidarity model. If that is the case, it would have been useful to have her insights on how, in light of the male-centeredness of the models, such models could be reconstructed to create an effective hybrid. Yet Dr. Cotter fails to explain how women’s continued second-class citizenship in the work-force, in spite of “significant strides in the past decades,”⁴⁷ can be reconciled with the complex and extensive collection of nondiscrimination laws—the very laws that Dr. Cotter suggests are part of the solution. Indeed, persistent inequality in light of such norms forces an interrogation of the efficacy of law to eliminate gender

42. *Id.* at 33.

43. *Id.*

44. *Id.* at 34 (footnote omitted).

45. Necessary steps should include considering “the homefront not just the job sphere” in the equation; incorporating “equitable distribution of paid work”; imposing “[r]estrictions on overtime”; and addressing “[i]mportant women’s issues such as sexual harassment, childcare, maternity, affirmative action and pay equity.” *Id.* at 33.

46. On the woman question, see AUGUST BEBEL, *Woman and Socialism*, in WOMAN: PAST, PRESENT AND FUTURE (Meta L. Stern trans., 1918), reprinted in HUMAN RIGHTS IN WESTERN CIVILIZATION 1600-PRESENT 86, 87 (John A. Maxwell & James J. Friedberg eds., 1994) (“[T]he woman question demands our special consideration. What the position of woman has been in ancient society, what her position is today and what it will be in the coming social order, are questions that deeply concern at least one half of humanity.”).

47. COTTER, *supra* note 4, at 26.

injustice. One glaring example of this persisting inequality is the failure of the comparable worth concept, which was introduced by the International Labor Organization (ILO) in 1951 in an effort to end gender wage disparities, when the organization was ostensibly caving in to the inevitability of job segregation.⁴⁸ Although Dr. Cotter recognizes that the women's movement had an impact on policy and legislative change, and that women have altered the composition of the labor force by their increased participation over the last thirty years, neither legislation nor the increased participation of women has eliminated job segregation or low pay.⁴⁹

III. GENDER INJUSTICE AND THE UNITED NATIONS

Chapter 3, *Gender Injustice and the United Nations*, is another bold undertaking, most of which—particularly the extensive textual quotes from documents—would have been better placed in an appendix. The value of the information, however, cannot be questioned. The chapter examines United Nations treaties and declarations⁵⁰ and signals key international legal provisions protecting the

48. The Equal Remuneration Convention, International Labour Organization (ILO) Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, *adopted* June 29, 1951, *entered into force* May 23, 1953 [hereinafter the Equal Remuneration Convention], in COTTER, *supra* note 4, at 45–46.

49. COTTER, *supra* note 4, at 35–36.

50. The author provides extensive quotations from the following: Universal Declaration of Human Rights, G.A. Res. 217 (III 1948), *adopted* Dec. 10, 1948 [hereinafter Universal Declaration], in COTTER, *supra* note 4, at 41–43; United Nations Charter (as amended), June 26, 1945, 59 Stat. 1031, T. S. No. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945 [hereinafter U.N. Charter], in COTTER, *supra* note 4, at 43–45; Statute of the International Court of Justice, 59 Stat. 1055, T.S. No. 993, 3 Bevans 1179 (June 26, 1945), in COTTER, *supra* note 4, at 45; Equal Remuneration Convention, *supra* note 48; Discrimination (Employment and Occupation) Convention, ILO Convention No. 111 (concerning Discrimination in respect of Employment and Occupation), *adopted* June 25, 1958, *entered into force* June 15, 1960, in COTTER, *supra* note 4, at 46–47; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976 [hereinafter ICCPR], in COTTER, *supra* note 4, at 47–50; Optional Protocol to the International Covenant on Civil and Political Rights, U.N.G.A. Res. 2200A (XXI), *adopted on* Dec. 16, 1966, *entered into force* March 23, 1976, in COTTER, *supra* note 4, at 50; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976 [hereinafter ICESCR], in COTTER, *supra* note 4, at 450–53; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 19 I.L.M. 33, *entered into force* Sept. 3, 1981 [hereinafter CEDAW], in COTTER, *supra* note 4, at 53–60; Optional Protocol to the CEDAW, *adopted* Dec. 10, 1999, U.N. Doc. A/RES/54/4, in COTTER, *supra* note 4, at 60–63; the International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 7, 1966, I.L.M. 352, *entered into force* Jan. 4, 1969 [hereinafter ICEAFRD], in COTTER, *supra* note 4, at 64; Beijing Declaration, *supra* note 3, in COTTER, *supra* note 4, at 65–88.

rights to equality,⁵¹ nondiscrimination,⁵² equal pay,⁵³ and education—the latter a right inextricably linked to women's ability to better their employment opportunities.⁵⁴ Of significant note, international norms mandate the elimination of stereotyping based on sex, which are often pretextually effected by relying on cultural tropes.⁵⁵

The author introduces the concept of gender mainstreaming, an approach used by the United Nations in its deliberations⁵⁶ that takes into account the impact that a particular policy or norm will have on women. Dr. Cotter also underscores the “universal, indivisible, interdependent and interrelated”⁵⁷ nature of all human rights—including civil, political, cultural, economic, and social rights—all of which are imperative for women to attain equality. Women constitute the majority of persons living in “abject poverty”;⁵⁸ are a small minority of all elected legislators world-wide, at approximately 10 percent;⁵⁹ and disproportionately bear the responsibility of caring for children and family, all while living in a world with an “unbalanced distribution of remunerated and unremunerated work between women and men.”⁶⁰

It is noteworthy and laudable that the author recognizes the nonessential nature of women.⁶¹ Because women are multidimen-

51. Universal Declaration, *supra* note 50, art. 2; ICCPR, *supra* note 50, art. 3; ICESCR, *supra* note 50, art. 3; UN Charter, *supra* note 50, at Preamble & art. 55; ICEAFRD, *supra* note 50, art. 2; CEDAW, *supra* note 50, *passim*, arts. 4, 15; Beijing Declaration, *supra* note 3, *passim*.

52. Universal Declaration, *supra* note 50, art. 7; ICCPR, *supra* note 50, arts. 2, 26; ICESCR, *supra* note 50, art. 2; CEDAW, *supra* note 50, *passim*, arts. 1, 2, 7, 13.

53. Universal Declaration, *supra* note 50, art. 23; ICESCR, *supra* note 50, art. 7; Equal Remuneration Convention, *supra* note 48, art. 2; and CEDAW, *supra* note 50, art. 11.

54. For the right to education, *see* Universal Declaration, *supra* note 50, art. 26; ICESCR, *supra* note 50, art. 13.

55. *See* CEDAW, *supra* note 50, art. 5.

56. COTTER, *supra* note 4, at 79.

57. *Id.* at 82. Noting that:

complete realization of human rights and fundamental freedoms of all women [is] essential for the empowerment of women. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect human rights and fundamental freedoms of all people.

Id. at 84.

58. *Id.* at 86.

59. *Id.*

60. *Id.* at 87.

61. For a discussion of essentialism, *see* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, in *CRITICAL RACE THEORY: THE CUTTING EDGE* 253–66 (Richard Delgado ed., 1995).

sional beings,⁶² identity factors such as race, ethnicity, culture, age, language, religion, and/or disability also have an impact on claims to equality.⁶³ To that list, I would add education, sexuality, class, and migration status as significant identity components that have an impact on gender injustice as they effect the marginalization of women.⁶⁴

IV. GENDER INJUSTICE: AN INTERNATIONAL COMPARATIVE ANALYSIS

Having presented the theoretical, factual, and legal backgrounds in the first three chapters, Dr. Cotter engages in the heart of the work in chapters 4 through 9. Rather than examining specific countries, chapters 7 and 9 review regional arrangements, specifically the North American Free Trade Agreement (NAFTA)⁶⁵ and the treaty forming the European Union (EU), respectively.

A. *Gender Injustice and the North American Free Trade Agreement (NAFTA)*

Dr. Cotter begins chapter 7 by recognizing that NAFTA has had "an important impact on women and the labor force."⁶⁶ After introducing NAFTA, Dr. Cotter aims to examine the treaty's drawbacks "in general and in regard to women,"⁶⁷ yet, this aim is not fulfilled. The chapter begins by presenting NAFTA's history;⁶⁸ a summary of numerous provisions;⁶⁹ and an overview of the North American Agreement on Labor Cooperation (NAALC).⁷⁰ Women are only specifically mentioned where the author notes the importance of cooperative activities for sex equality under NAALC.⁷¹

62. For a discussion of multidimensionality, see Berta E. Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994).

63. COTTER, *supra* note 4, at 87.

64. See generally Berta E. Hernández-Truyol, *Las Olvidadas: Gendered in Justice/Gendered Injustice—Latinas, Fronteras, and the Law*, 1 J. GENDER, RACE & JUSTICE 353 (1998); Berta E. Hernández-Truyol, *Borders (En)Gendered—Normativities, Latinas and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997).

65. North American Free Trade Agreement, Dec. 17, 1992, 107 Stat. 2057, 32 I.L.M. 289 [hereinafter NAFTA], in COTTER, *supra* note 4, at 180–87, 193–200.

66. COTTER, *supra* note 4, at 175.

67. *Id.*

68. *Id.* at 175–80.

69. *Id.* at 180–87.

70. North American Agreement on Labor Cooperation, Sept. 13, 1993, 32 I.L.M. 1499 [hereinafter NAALC], in COTTER, *supra* note 4, at 188–93.

71. COTTER, *supra* note 4, at 193.

The section on NAFTA's benefits and concerns evaluates and critiques the treaty and its neoliberal economic policies.⁷² Even in this section, however, gender concerns are raised only in passing when the author notes that " '[t]he burden of Free Trade driven restructuring was shared unequally on a national, regional, class and *gender* basis.' "⁷³ No explanation of the stated nexus is provided.

A mere two paragraphs focus on women in relation to NAFTA. One passage proclaims that "there is a gender gap"⁷⁴ concerning free trade and notes that more women than men oppose free trade "because it affects every issue women in this country are concerned about, including day care, health care, the environment, consumer protection and prices."⁷⁵ The next asserts that free trade and globalization affect the jobs women hold and lead to depressed wages and diminished benefits,⁷⁶ and result in increased unemployment.⁷⁷

Although this chapter contains much important information and historical contextualization of NAFTA, it is a misnomer to label it *Gender Injustice and the North American Free Trade Agreement*, as that direct topic is barely addressed.⁷⁸ This chapter would have been a useful contribution to the literature had it focused on the gendered impacts of NAFTA in more detail. If there is a lack of information, this could be a rallying call for empirical research.

B. *Gender Injustice and the European Union*

In contrast to chapter 7, chapter 9 actually focuses on women in the context of the EU's treaty arrangement. Beginning with a review of women's role in European society, the chapter reveals women's now-familiar higher rates of unemployment and the persistent gendered pay gap, which is present regardless of education and family status.⁷⁹

72. *Id.* at 193–200.

73. *Id.* at 196 (footnote omitted) (emphasis added).

74. *Id.* at 198.

75. *Id.*

76. *Id.* at 199.

77. *Id.*

78. See *supra* notes 71, 73, and accompanying text. See generally COTTER, *supra* note 4, at 175 (addressing generally the history of NAFTA, NAFTA, and the side agreement on labor cooperation), 193 (discussion of equal pay, NAFTA benefits and concerns), 198–200 (discussion of gender issues).

79. See, e.g., COTTER, *supra* note 4, at 239–41.

After providing useful demographic information that illustrates women's persistent inequality across class and education lines, the chapter offers an appropriately brief history of the formation of the EU.⁸⁰ Article 141 of the Treaty of Amsterdam entrenched the principle of equal pay for equal work, or for work of equal value, for men and women—a principle with which each EU member states' domestic law must be consistent in order to avoid preemption.⁸¹ Thus, EU law makes significant strides to promote equality in employment and proscribe both direct and indirect discrimination.⁸²

Dr. Cotter then describes five key EU institutions⁸³ and proceeds to discuss the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁸⁴ and the European Social Charter.⁸⁵ While the ECHR did not include a nondiscrimination provision, Protocol 11 provides a nondiscrimination clause

80. *Id.* at 243–50. The history of the European Union (EU) begins with the Treaty of Paris which established the coal and steel community. Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, 261 U.N.T.S. 140, in COTTER, *supra* note 4, at 243. Next came the Treaty of Rome, the treaty which created the European economic community and required member states to transfer to the community the ability to enter into treaties with international organizations and non-member states, and also required member states to agree to the free movement of labor and capital within the community. Treaty Establishing the European Economic Union, Mar. 25, 1957, 298 U.N.T.S. 3 [hereinafter Treaty of Rome], in COTTER, *supra* note 4, at 243–45. The 1992 Maastricht Treaty created the EU which effectively created an international market with free movement of goods, capital, services, and citizens of member states. Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 253, in COTTER, *supra* note 4, at 245–46. Finally, the 1997 Treaty of Amsterdam amended the Treaty of Rome. Treaty of Amsterdam, Oct. 2, 1997, 37 I.L.M. 56, in COTTER, *supra* note 4, at 246–50.

81. Treaty of Amsterdam, *supra* note 80, art. 141, in COTTER, *supra* note 4, at 247. See also European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89 (espousing the notion of equal pay for work of equal value for male and female workers), in COTTER, *supra* note 4, at 256–58.

82. Dr. Cotter distinguishes between direct and indirect discrimination, noting that direct discrimination is different treatment and indirect discrimination occurs when a neutral norm has disparate impact on the different genders. Indeed, community law allows E.U. member states to enact measures to eradicate impacts of past discrimination, current discrimination, and to promote equality of opportunity in employment. COTTER, *supra* note 4, at 248.

83. The five institutions include the European Parliament, the Council of the European Union, the European Commission, the European Court of Justice, and the Court of Auditors. *Id.* at 250.

84. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter ECHR], in COTTER, *supra* note 4, at 253–55.

85. European Social Charter, see *supra* note 81.

that promotes gender equality.⁸⁶ In addition, Protocol 12 prohibits discrimination on numerous grounds, including gender.⁸⁷

The European Social Charter promotes the right to equal opportunities and equal treatment in matters of employment and occupation—including vocational training, promotion, and working conditions—without discrimination based on gender.⁸⁸ The Charter provides for maternity rights, with a view towards women's ability to exercise their real, as opposed to merely theoretical, equal employment rights.⁸⁹ Finally, Dr. Cotter documents myriad European Community directives that provide for equal pay and equal treatment of women,⁹⁰ yet, she fails to explain why, if law is a means for change, there remains persistent inequality in the workforce despite laws promoting equality.

C. *Gender Injustice Throughout the World*

Chapters 4, 5, 6, and 8 examine gender injustice in various countries by reviewing the role of women and analyzing equality legislation in each state. Before delving into a discussion of Dr. Cotter's useful analysis, one critique is appropriate: although Dr. Cotter recognizes women's multidimensionality in the introductory chapters, she fails to consider diversity between and among women in her state-by-state analysis. This is unfortunate in view of Dr. Cotter's acknowledgment that diversity has an impact on women's occupa-

86. Protocol 11 to European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 5, 1994, 33 I.L.M. 943, in COTTER, *supra* note 4, at 254.

87. Protocol 12 to European Convention for the Protection of Human Rights and Fundamental Freedoms, C.E.T.S. 177, *entered into force* Jan. 4, 2005, <http://www.echr.coe.int/Convention/webConvenENG.pdf> (last visited June 20, 2005), in COTTER, *supra* note 4, at 255.

88. European Social Charter, *supra* note 81, in COTTER, *supra* note 4, at 255–58.

89. COTTER, *supra* note 4, at 257 (noting European Social Charter, *supra* note 81, arts. 8, 27).

90. *Id.* at 258–64. The directives include: (a) on equal pay, Council Directive 75/117/EEC, on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, Feb. 10, 1975; (b) on equal treatment, specifically prohibiting discrimination on grounds of gender, Council Directive 76/207/EEC, Feb. 9, 1976, and Directive 2002/73/EC of the European Parliament and of the Council, amending Council Directive 76/207/EEC, Sept. 23, 2002 (This right is also reflected in numerous international documents. *See, e.g.*, Universal Declaration, *supra* note 50; CEDAW, *supra* note 50; ICEAFRD, *supra* note 50; ICCPR, *supra* note 50; ICESCR, *supra* note 50); (c) on equality of treatment for men and women in social security, Council Directive 79/7/EEC, Dec. 19, 1978; Council Directive 86/378/EEC, July 24, 1986; and Council Directive 86/613/EEC, Dec. 11, 1986; and (d) on protections of women during pregnancy, Council Directive 92/85/EEC, Oct. 19, 1992. COTTER, *supra* note 4, at 258–64.

tional attainments.⁹¹ Had she reported disaggregated data about different subordinations women experience by race, sexuality, religion, culture, ethnicity, or endogenous status category, Dr. Cotter would have provided an invaluable service.

Significantly, in chapters 4 (reviewing Australia and New Zealand), 5 (reviewing Africa and South Africa), 6 (reviewing Canada, Mexico, and the United States), and 8 (reviewing the United Kingdom and Ireland), Dr. Cotter reports the same patterns she relates in chapter 2 and then reiterates in chapter 10: in every state, notwithstanding favorable legislation,⁹² women experience a gender wage gap regardless of education, job segregation, and the onus of the double duty.⁹³ These patterns persist as global realities, even in light of marked progress in education and labor force participation within the last few decades.⁹⁴ As space does not permit a detailed country analysis, only noteworthy particularized observations will be highlighted.

1. Gender Injustice in Australia and New Zealand

Dr. Cotter notes that in New Zealand "[e]thnicity plays a factor in gender discrimination . . . [with] Maori, Pacific and women from 'other' ethnic groups [being] currently less likely to partici-

91. See COTTER, *supra* note 4, at 9 (noting that race and age are also factors in employment discrimination); *id.* at 13 (noting that "[g]eneralities are not presumed nor are they made here for this would detract from the very purpose of this book" and that the book "does not rule out other forms of injustices"); *id.* at 16 (observing that "the female experience is diverse and shaped by race, class, ethnic, sexual orientation and gender").

92. For legislation in Australia, see COTTER, *supra* note 4, at 95–102. The author notes that laws provide support in childcare and maternity leave as well as prohibitions on sex discrimination. Additionally, subsequent court decisions were supportive of women's rights. *Id.* at 95–99. Moreover, Australia ratified international conventions mandating sex equality. The Sex Discrimination Act of 1984 prohibits discrimination on the "grounds of gender, marital status, pregnancy and potential pregnancy, and family responsibilities," but permits the bonafide occupational qualification (BFOQ) discrimination if "the duties of the position can be performed only by a person having particular physical attributes . . . that are not possessed by persons of the opposite sex." COTTER, *supra* note 4, at 97–98 (citing Australia's Sex Discrimination Act of 1984, Sec. 30). Other laws safeguard women and other groups of workers, "including youth and those from culturally and linguistically diverse backgrounds" and protect their right to equal remuneration for work of equal value without discrimination on the grounds of gender. COTTER, *supra* note 4, at 99.

93. For the role of women in Australia, see *id.* at 93–95; New Zealand, *id.* at 102–04; Africa, *id.* at 113–15; South Africa, *id.* at 123; Canada, *id.* at 139–44; the United States, *id.* at 153–55; the Commonwealth (United Kingdom), *id.* at 207–12; and Great Britain, *id.* at 212–15. Although the author reviews specific legislation in Mexico, Northern Ireland, and Ireland, the role of women is not discussed. "Double duty" refers to the reality that women worldwide who join the paid labor force nevertheless continue to shoulder more than their fair share of household and family responsibilities. See, e.g., *id.* at 86–87, 141, 155.

94. See COTTER, *supra* note 4.

pate in the labor force than European/Pakeha women.”⁹⁵ In addition, “[w]omen in all ethnic groups prioritize their children’s needs over their own,”⁹⁶ and when marriages break down, women’s economic standards are lowered.⁹⁷ Finally, the more a woman contributes to household income, “the more she is likely to have some say in household financial decisions.”⁹⁸ It would have been useful to know whether these, too, are global patterns.

2. Gender Injustice in Africa and South Africa

In chapter 5, Dr. Cotter succeeds in recognizing the interrelationship and interdependence of the work that African women accomplish in the work environment and as key providers for their families, such as producing food, carrying water, collecting fuel wood, and caring for children and the elderly.⁹⁹ She highlights the critical issue of food security and underscores how this exacerbates women’s double burden.¹⁰⁰

Dr. Cotter recognizes that Africa is not monolithic; rather, there is much diversity “of gender relations, culture, geography, society, family, economy, and natural resources.”¹⁰¹ These diversities render it inappropriate to seek a standardized solution for gender issues. Contrary to the reported negative pattern of globalization elsewhere,¹⁰² globalization in Africa has had a positive impact on women in trade because of the textiles boom.¹⁰³ Significantly, Africa’s leaders have undertaken regional initiatives to pursue women’s equality and “promote the role of women in social and economic development.”¹⁰⁴ They have also pledged to “eradicate poverty and move towards sustainable growth and development.”¹⁰⁵ In this regard, these leaders view ensuring education and protecting health—including reproductive health—as neces-

95. *Id.* at 102.

96. *Id.* at 104.

97. *Id.*

98. *Id.*

99. *Id.* at 114.

100. *Id.* at 113.

101. *Id.*

102. See, e.g., *id.* at 211 (noting that Commonwealth states have recognized that “[g]lobalization has had negative effects on rising unemployment, poverty and the difficulty of providing social safety nets in weak and vulnerable economies especially affecting women and children”).

103. *Id.* at 114.

104. *Id.*

105. *Id.*

sary for individual progress, as well as for community and continental development.¹⁰⁶

To be sure, any African legislation concerning equality reflects the continent's history and emerges as some of the most comprehensive and progressive in the world.¹⁰⁷ Indeed, it recognizes the "historical tradition and the values of African civilization"¹⁰⁸ and the need "to eliminate [not only] colonialism, neo-colonialism, apartheid, [and] zionism"¹⁰⁹ but also "all forms of discrimination."¹¹⁰ The Protocol on Rights of Women in Africa¹¹¹ prohibits "all behavior, attitudes and practices which negatively affect the fundamental rights of women and girls, such as their right to life, health and bodily integrity."¹¹² Furthermore, the Protocol expressly requires state parties to

modify the social and cultural patterns of conduct of men and women . . . with a view to achieving the elimination of harmful cultural and traditional practices . . . which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women.¹¹³

Like the progressive and historically-sensitive continental norms, the Constitution of South Africa¹¹⁴—the one African nation studied by Dr. Cotter—establishes human dignity and the absence of racism and sexism as central values for the state.¹¹⁵ South Africa's Constitution also expressly guarantees equal protection and recognizes people's multidimensionality by prohibiting discrimination "on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and

106. *Id.* Specific goals for women include: access to primary education; closing the gender gap in education; access to healthcare, including reproductive healthcare, family planning, reduction in infant, child, and maternal mortality and morbidity; and increased life expectancy. *Id.* at 115.

107. *Id.* at 115–16, 123–26, *passim*.

108. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *adopted* July 11, 2003 [hereinafter African Protocol], http://www.achpr.org/english/_info/women_en.html (last visited June 20, 2005), *in* COTTER, *supra* note 4, at 115.

109. COTTER, *supra* note 4, at 116.

110. *Id.*

111. African Charter, *supra* note 108, at 119–23.

112. *Id.* art. 1.

113. *Id.* art. 2(2).

114. South African Constitution, *in* COTTER, *supra* note 4, at 124–28.

115. *Id.* at 125.

birth.”¹¹⁶ Significantly, gender discrimination is extensively defined.¹¹⁷

3. Gender Injustice in Canada

In her review of Canada, Dr. Cotter links women’s advancement in the labor force to a trend towards women’s entrepreneurship that “has boomed in the last few decades, accounting for more than one fourth of all employment.”¹¹⁸ Dr. Cotter suggests that this move towards self-employment is the result of globalization-caused “corporate downsizing and restructuring, as well as contracting out and privatization.”¹¹⁹ Yet, even in the context of self-employment, the gender wage gap persists.¹²⁰

Two observations about Canada are noteworthy: First, the Canadian Human Rights Act¹²¹ utilizes a comparable worth standard to achieve pay equity, “where respective work is shown to be equal in value through a combination of skill, effort, responsibility and working conditions”¹²² by allowing a comparison of the value of the work. Second, Canada recognizes the effect of status—including gender, ethnicity, or disability—on employment, and thus realizes “that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.”¹²³

4. Gender Injustice in the United States

In turning to the laws of the United States, Dr. Cotter notes the historical importance of equality dating to the U.S. Declaration of

116. *Id.* at 126 (referring to Article 9(3)).

117. Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, Act No. 4 of 2000, art. 8(a)–(i) (S. Africa), *in* COTTER, *supra* note 4, at 134 (includes the following in the definition of gender discrimination: “(a) gender-based violence; (b) female genital mutilation; (c) the system of preventing women from inheriting family property; (d) any practice including traditional, customary or religious practices which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child; (e) any policy or conduct that unfairly limits access of women to land rights, finance and other resources; (f) discrimination on the grounds of pregnancy; (g) limiting women’s access to social services or benefits, such as health, education and social security; (h) the denial of access to opportunities . . . [and] (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour”).

118. COTTER, *supra* note 4, at 143 (footnote omitted).

119. *Id.*

120. *Id.* at 143–44.

121. Canadian Human Rights Act (R.S. 1985, ch. H-6), *in* COTTER, *supra* note 4, at 146–49.

122. *Id.* at 147.

123. *Id.* at 150 (referring to Article 2).

Independence.¹²⁴ Dr. Cotter, however, fails to mention that at the time of the Declaration of Independence the idea of equality was distorted as it coexisted with slavery and the status of women as chattel. Indeed, the Constitution itself did not originally provide for equality;¹²⁵ this is accomplished through the Fifth¹²⁶ and Fourteenth¹²⁷ Amendments which guarantee due process of law and equal protection to citizens. Expansion of the term "equality" continues in the United States; while the Fourteenth Amendment was drafted in reference to racial equality, the Supreme Court has applied it to sex discrimination as well, albeit in a diluted form.¹²⁸

Dr. Cotter's treatment of U.S. legislation and jurisprudence on sex equality is disappointingly incomplete and dated. To be sure, in contrast to the Constitution's silence on sex, the Equal Pay Act of 1963 did outlaw differential wages for equal work based on sex.¹²⁹ Dr. Cotter, however, does not mention that the Act failed to incorporate the theory of comparable worth, a concept the courts have expressly rejected.¹³⁰ Moreover, although the Civil Rights Act of 1964¹³¹ expressly prohibits discrimination in employment on the basis of sex, unlike South Africa, U.S. courts have refused to recognize discrimination against women based on multidimensionality—such as discrimination based on the combination of race and sex.¹³² Finally, the Civil Rights Act recognizes the bonafide occupa-

124. THE DECLARATION OF INDEPENDENCE (U.S. 1976), in COTTER, *supra* note 4, at 155.

125. U.S. CONST., in COTTER, *supra* note 4, at 156–58.

126. U.S. CONST. amend. V, in COTTER, *supra* note 4, at 157.

127. U.S. CONST. amend. XIV, in COTTER, *supra* note 4, at 157.

128. See *Butchers' Benevolent Ass'n of New Orleans v. Crescent City Live-Stock Landing And Slaughter-House Co.*, 83 U.S. 36, 38 (1872) (Slaughter-House Cases) (stating that the purpose of the equal protection clause was only to prohibit race discrimination). But see, e.g., *Craig v. Boren*, 429 U.S. 190, 197–99 (1976) (applying Fourteenth Amendment to invalidate Oklahoma statute establishing differing minimum drinking ages for men and women). Racial classifications are subject to a strict scrutiny analysis. See, e.g., *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 273–74 (1987). Sex-based classifications, however, are subject only to intermediate scrutiny. See, e.g., *Craig*, 429 U.S. at 197–99 (1976) (applying intermediate scrutiny); see also COTTER, *supra* note 4, at 158.

129. See COTTER, *supra* note 4.

130. See *County of Washington, Oregon, v. Gunther*, 452 U.S. 161 (1981) (rejecting comparable worth); see also *Lang v. Kohl's Food Stores, Inc.*, 217 F.3d 919, 923 (7th Cir. 2000) (noting comparable worth claims are not cognizable under the Equal Pay Act).

131. Civil Rights Act of 1964, Pub. L. 88-352, June 2, 1964, in COTTER, *supra* note 4, at 159–61.

132. See Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 103 (Kimberlé Crenshaw et al. eds., 1995); *DeGraffenreid v. General Motors Assembly Div.*, 558 F.2d 480, 482–85 (8th Cir. 1997) (in an action brought by five black women against former employer alleging that "seniority system and 'last hired-first fired' layoff policy mandated by [employer's] collective bargaining agreement perpet-

tional qualification (BFOQ) defense—detailed below but not noted by the author—which permits discrimination based on gender roles and stereotypes.¹³³

5. Gender Injustice in the United Kingdom and Ireland

Dr. Cotter considers the public-private employment sector divide and its attendant deleterious effects on women only briefly in chapter 8. In the context of the Commonwealth of the United Kingdom and Ireland, Dr. Cotter notes that there has been a collapse of the public-private divide because, “in the application of international human rights law,” the state is accountable for violations against women by private actors.¹³⁴ Unfortunately, Dr. Cotter fails to engage the significance of this conflation to women. Indeed, Dr. Cotter observes that traditional perceptions, socioeconomic impediments, differing levels of education, educational segregation, and discrepancies in levels of political participation continue to work as obstacles and “affect women’s ability to participate fully and equally in decision-making in the political, public and private sectors.”¹³⁵

V. GENDER INJUSTICE: A CONCLUSION AND POSSIBLE SOLUTION

In her conclusion, Dr. Cotter brings together her invaluable research, reiterating that “gender is a constitutive element of social relationships based on perceived differences between the sexes and is a primary way of signifying relationships of power.”¹³⁶ Hence, Dr. Cotter underscores the need for the type of gender analysis that reaches beyond historical *de jure* discrimination to identify the real *de facto* discriminatory consequences of ostensibly neutral norms. Because “society’s laws rest on masculinist false

uate[d] the effect of [employer’s] past race and sex discrimination, the Court of Appeals affirmed the lower court’s ruling that the claims of race and sex discrimination” under the Civil Rights Act of 1964 were either barred by limitations or failed to state violation of the Act and reversed the lower court’s dismissal of race discrimination claims that were based on federal civil rights statute on grounds of judicial economy).

133. Civil Rights Act, *supra* note 131, § 703(e)(1), in COTTER, *supra* note 4, at 162–67 (providing it is not unlawful to engage in prohibited activity on the basis of “religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise”).

134. COTTER, *supra* note 4, at 207.

135. *Id.* at 210.

136. *Id.* at 273 (footnote omitted).

universals,"¹³⁷ ubiquitous structural and endemic male biases imbue law, its institutions, and its processes.¹³⁸

Notwithstanding comprehensive international and domestic laws proscribing sex discrimination and promoting equality, "women [are] poorer than men across class, race, national, economic and ethnic lines" in industrial and developing countries alike.¹³⁹ Although women have progressed in employment, their economic standing in the paid labor force is far from equal to that enjoyed by men.¹⁴⁰ Everywhere in the world, women experience gender wage gaps within similar professions and find themselves in low-paying, segregated positions that are concentrated in a small number of occupations and generally lack authority, provide for little, if any mobility, and offer low pay.¹⁴¹ Globally, gender differences are deployed as a pretext to justify the differential treatment of men and women in the work force.¹⁴²

To be sure, women increasingly participate in the labor force and have sought alternatives such as self-employment, part-time employment, and home-based work to expand their economic opportunities.¹⁴³ Yet the informal sector, which provides a larger source of employment for women than for men, offers less stable working conditions, provides lower income, and lacks benefits.¹⁴⁴ Further, regardless of whether they are employed outside the home, women bear a double burden because they continue to perform the majority of the unpaid domestic and community work.¹⁴⁵

Globalization has exacerbated the poor working conditions that women encounter because global employment patterns are "characterized by low wages, little or no labor standards protection, poor working conditions particularly with regard to women's occupational health and safety, low skill levels, and a lack of job security and social security, in both the formal and informal sectors."¹⁴⁶ Female employees still experience discrimination and sexual harassment, notwithstanding the laws prohibiting such conduct.¹⁴⁷ In addition, the workplace has not changed to accommodate

137. *Id.*

138. *Id.* at 273–76; see also *supra* notes 27–28 and accompanying text.

139. COTTER, *supra* note 4, at 273 (footnote omitted).

140. *Id.* at 274, *passim*.

141. *Id.* at 274–75.

142. *Id.* at 274, 276.

143. *Id.* at 274.

144. *Id.*

145. *Id.* at 274–75; see also *supra* note 93 and accompanying text.

146. COTTER, *supra* note 4, at 275.

147. *Id.* at 276.

women's needs by offering services such as flexible schedules and affordable childcare.¹⁴⁸ In her analysis, Dr. Cotter aptly notes that "rethinking employment policies is necessary in order to integrate the gender perspective."¹⁴⁹ I completely agree with this proposition, as well as with Dr. Cotter's view that "the legislative and legal systems are of primary importance in the fight against gender injustices and for gender justice."¹⁵⁰

Where Dr. Cotter and I may depart in our forward-looking, common goal for gender equality is in our evaluation of the potential efficacy of legal systems to assist with the necessary rethinking of employment policies. Passing, and even enforcing, laws is insufficient to attain equality. As this book demonstrates, all over the globe laws mandate gender equality and nondiscrimination, yet inequality persists.

Law, therefore, cannot be the only catalyst for change, especially when it routinely incorporates male biases. BFOQs illustrate this point. Throughout her book, Dr. Cotter notes that laws will often have exceptions for equality where there is a so-called BFOQ.¹⁵¹ Dr. Cotter, however, fails to explain what could possibly constitute a BFOQ other than tasks that require different biological functions such as sperm donation, egg donation, wet nursing, or surrogate motherhood. Outside of these sex-specific "real" limitations, any BFOQ exception simply permits the continuation and perpetuation of the hetero-patriarchal status quo¹⁵²—the masculinist false universe to which the author refers.¹⁵³ The BFOQ defense, therefore, justifies disparities based on stereotypes and traditional gender roles and grants gender discrimination a patina of legality and legitimacy.

If we rely on law alone, sex discrimination will continue to persist. In order to eradicate myriad gendered inequities discussed in the book, it is necessary to engage not only the formal processes of law and legislation, but also the informal processes of family, community, and civil society. In sum, while I agree with Dr. Cotter that further implementation and development of the law is needed, it is possible that informal policies—such as those pursued by activist international nongovernmental organizations which seek to edu-

148. *Id.*

149. *Id.*

150. *Id.* at 277.

151. See *supra* note 93 (defining "double duty").

152. Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflations of Sex, Gender & Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN. 161 (1996).

153. COTTER, *supra* note 4, at 273.

cate the public about the need to promote equality and eradicate violence—may be more efficient in the quest for gender justice than the formal processes of the courts and legislatures, as such institutions remain largely imagined, designed, and controlled by men.¹⁵⁴ Women's position at the margins of employment around the world is a result of formal state, private, and cultural tropes that have created and legitimized separate spheres for women's and men's existences. In addition to the formal development of law, it is important (1) to develop an informal, parallel track to facilitate and enhance women's voices globally and locally; (2) to add to their visibility and provide access to their work and resources; and (3) to develop a formidable and impressive network of data, information, and support. Such an informal system could initiate the reconstitution of the rights essential to meet women's needs, effect their self-determination, and ensure their participation in the global and local spheres.

Gender Injustice makes a significant contribution to the quest for gender equality. It offers demographics from around the globe (although Asia and the Middle East are glaringly absent) and shows that women worldwide, from the North and South alike, regardless of race, class, culture, or education: earn less than men; exist in segregated jobs; and carry the dual burden of working in the paid labor market and bearing a disproportionate responsibility for household work. This book also provides an outline of the legal structures and processes in studied states where women have experienced these same subordinated economic fates. While presenting data in a more uniform way would have further enhanced the value of the work for comparative studies, Dr. Cotter provides an invaluable service in her study of gender inequality.

154. See, e.g., *id.* at 86 (noting that "equality between men and women has still not been achieved" with women representing "a mere 10 per cent of all elected legislators worldwide"). For example, in the United States, both houses of Congress, responsible for the law-making function, are dominated by men. The composition of the 2005 House of Representatives is 369 men and only sixty-six women; the Senate consists of eighty-six men and only fourteen women. CENTER FOR AMERICAN WOMEN AND POLITICS, WOMEN IN ELECTIVE OFFICE 2005 FACT SHEET (n.d.), <http://www.cawp.rutgers.edu/Facts.html> (last visited June 20, 2005).